

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

ELISHA RIGGLEMAN,

Petitioner,

v.

CIVIL ACTION NO. 5:13-cv-02137

DEBBIE H. STEVENS,

Respondent.

**MEMORANDUM OPINION AND ORDER**

The Court has reviewed the Petitioner's February 7, 2013 Application for Writ of *Habeas Corpus* by a Person in Federal Custody under 28 U.S.C. § 2241 (Document 1), and the Petitioner's Motion to Quash (Document 5), which has been construed as a Motion for Voluntary Dismissal.

By *Standing Order* (Document 2) entered on February 7, 2013, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On February 20, 2013, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 6) wherein it is recommended that this Court grant the Petitioner's Motion for Voluntary Dismissal (Document 5), dismiss the Petitioner's Section 2241 Application (Document 1) without prejudice, and remove this matter from the Court's docket. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by February 11, 2013.

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Petitioner's Motion for Voluntary Dismissal (Document 5) is **GRANTED**, the Petitioner's Section 2241 Application (Document 1) is **DISMISSED WITHOUT PREJUDICE**, and this matter is **REMOVED** from the Court's docket.

The Court has additionally considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." Id. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this Court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). The Court concludes that the governing standard is not satisfied in this instance. Accordingly, the Court **DENIES** a certificate of appealability.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: March 12, 2013

A handwritten signature in blue ink, reading "Irene C. Berger", is written over a horizontal line.

IRENE C. BERGER  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF WEST VIRGINIA